Filed 5/18/09 In re E.B. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re E.B., et al., Persons Coming Under the Juvenile Court Law.	B206537 (Los Angeles County Super. Ct. No. CK49589)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. R. F., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Marilyn Mackel, Juvenile Court Referee. Dismissed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Marissa Coffey, under appointment by the Court of Appeal, for Respondents Minors.

Appellant R.F., the maternal great aunt of the minors N.B., E.B. and C.B., appeals the juvenile dependency court's orders removing the minors from her placement and the *sua sponte* dismissal of the section 387 petitions (containing allegations against her) prior to the jurisdictional hearing on the petitions and without consideration of Welfare and Institutions Code[1] section 361.3. For the reasons stated herein, we do not reach the merits of these contentions because we conclude that R.F., as a mere relative and short-term caretaker had no legally recognized interest that was harmed as a result of these orders and thus she lacks standing to challenge them on appeal. Accordingly we dismiss.

FACTUAL AND PROCEDURAL HISTORY

A. Dependency Proceedings From 2002-2006 and Circumstances Resulting in Prior Appeal.[2]

The eldest of the children subject of this appeal, N.B. (born in November 2000), originally came to the attention of the Kern County Department of Human Resources ("DHS") in May 2002. The DHS filed a section 300 petition and took N.B. into protective custody after his five-month-old sister A.B. died under questionable circumstances. Allegations were also made against C.B., ("Mother")[3] to the effect that Mother was abusing N.B.

The petition was sustained and in March 2003 the matter was transferred to Los Angeles County when the parents moved to the county.

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1 All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

2 These facts are set forth in detail in the unpublished opinion of this court in the prior appeal brought by R.F. (*In re Emily B.* (case No. B190383)); they are summarized here.

3 Neither Mother nor the minors' father N.C.B. (Father) is a party to the appeal.

On August 27, 2003, DCFS filed a petition under section 300 on behalf of E.B. who was born in August 2003, alleging that Mother had a history of amphetamine use and that E.B. tested positive for drugs at birth. DCFS also filed a petition on behalf of N.B. under section 342 on the ground that Mother was a current user of amphetamine and that such use "periodically limited[ed]" Mother's ability to regularly care for N.B. Both petitions were ultimately sustained. On October 21, 2003, at the jurisdictional/disposition hearing the court sustained the petitions, declared the children dependents; removed custody from the parents; ordered the children placed with the paternal grandparents; and ordered family reunification services.

In 2004, after Father had made progress in the case plan the court ordered N.B. to be placed in the home of parent (Father) at the section 366.21, subdivision (e) hearing and ordered DCFS to make unannounced home visits. E.B. remained placed with the paternal grandmother ("Grandmother"). Over the next year the children remained as placed while the parents worked to maintain compliance with the case plan.

On June 28, 2005, a petition under section 388 was filed by R.F. declaring she was the maternal great-aunt of the children and stating she had "maintained a life-long interest" in Mother and had "a consistent interest in her children throughout their young lives." She described the maternal side of their family and their interest in Mother's whereabouts and gave information about the life of Mother. R.F. indicated she had made many requests of the social worker to visit the children. R.F. indicated she had offered herself as an available adoptive placement for E.B. and to care for N.B. R.F. asked for visitation with the children, consideration as placement for the minors and for de facto parent status.

R.F. also reported that Father hit N.B. on the head and DCFS was in the process of investigating the allegations. A section 366.26 report had been prepared earlier for that date; it noted that E.B. had lived with the Grandmother since shortly after her birth and that Father lived with N.B. in a separate part of the house. Grandmother stated that Mother visited E.B. inconsistently and the social worker believed Mother may be living

with Father. Grandmother had a DUI in 1998 in the state of Nevada and seemed to show little remorse about it and denied any current alcohol use. The DCFS was also concerned that Grandmother was seeking a legal guardianship so that she could eventually turn E.B. over to the parents once jurisdiction was terminated.[4] During an interview with the social worker N.B. stated that Father and Mother hit him and Mother was living in the home, but there were no bruises or marks on him. DCFS made the recommendation that while allegations were being investigated E.B. be placed in long term foster care.

The court granted R.F. monitored visits once or twice a week with both children with discretion vested in DCFS to liberalize the visits. Grandmother also filed a request for de facto parent status on July 6, 2005, on the basis that R.F. had not been in the lives of the children and that the last time the Mother saw R.F. was when she was four or five years old. Grandmother also related that they had no intention of returning E.B. to the parents once they had adopted her. In July 2005 the court granted the request of both parties for de facto parent status.

At the September 26, 2005, hearings, DCFS reported that Father was found by the social worker to be sincere in his concerns for N.B.'s well being and development and was aware of his duty to protect N.B. from Mother's drug use. Father was described by the social worker as a mild person who seemed able to control his temper and who cared for N.B. Father believed N.B. needed him, needed stability, and was very concerned about N.B's welfare. The DCFS also closed the investigations of the allegations concerning the Father from June 2005.

DCFS recommended N.B. be ordered home-of-parent, jurisdiction be terminated over N.B.; that legal guardianship be granted to the paternal grandparents over E.B.; that the case be closed; and that the de facto statuses and R.F.'s unmonitored visitation orders

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4 At the time the DCFS also expressed concerns about the placement of the children because of the Grandmother's alleged abuse of alcohol and conditions of Grandmother's home.

be lifted. In the fall of 2005, the DCFS asked the court to reconsider the de facto parent status of R.F. and/or reduce her visitation with the children to four hours once a month in view of the fact that her current visitations were "very disruptive" and "[t]hey are essentially with someone who has never been involved in their lives. . . ." Counsel for the children did not take issue with the visits. Mother and Father joined in the position of DCFS. A hearing date to determine termination of jurisdiction over N.B. was set for early 2006, the court declining to terminate jurisdiction on that date because it wanted assurances of Mother's compliance and that the Father and Grandmother were following the court's orders. The court further ordered that R.F. could continue to have visits with the children for two to four hours twice a month. The court also appointed Grandmother as E.B.'s legal guardian. Letters of guardianship were issued and no objections were made. The matter was then continued to February 2006 for a progress report and to May 2006 for a section 364 hearing and consideration for a permanent plan.

In December 2005, Mother gave birth to a son, C.B.

On May 8, 2006, at a hearing where R.F. and her attorney were present, the court found there was no longer any risk to the children and that it was inclined to terminate jurisdiction over both children. Mother was in compliance and Grandmother had been providing E.B. with a stable home. The court then stated that it was "inclined to terminate jurisdiction. Any objections? Hearing none, jurisdiction is terminated." R.F.'s de facto parent status was terminated "by operation of law today."

A section 388 petition was filed by R.F. on May 8, 2006, seeking to reinstate jurisdiction, reassign a new social worker, and give her the "opportunity to have [her] day in court. . . ." The petition was denied for failing to state facts to support the allegations, failing to state a change of circumstances or new evidence or how it would promote the children's best interests, and because counsel and R.F. were present at the hearing.

R.F. appealed the court's order terminating its jurisdiction over N.B. and E.B. and court's failure to order visitation with E.B. prior to the termination of jurisdiction. This court affirmed, finding that R.F. had forfeited her right to challenge the termination of

jurisdiction order. Likewise as to the order of visitation with E.B., we concluded that she had failed to preserve it for appellate review and that any error in the proceedings was harmless.

B. Dependency Proceedings From 2007 to Present and Circumstances Resulting in Current Appeal.

The children N.B. and C.B. came to the attention of the DCFS again in the late spring of 2007 when it was reported that Mother had given birth to a baby in the garage of the family home during a yard sale. Father had provided Mother with a shoe lace to tie off the umbilical cord after Mother cut it with scissors. Mother admitted to having used drugs, but stated that she had planned to give the baby up for adoption.[5]

In early May 2007, the DCFS filed a section 300 petition on behalf of N.B. (who was then 6 years old) and the toddler C.B. under subdivisions (a), (b), and (j) alleging that Mother was physically abusing the boys and using illegal drugs. The original petition did not contain any allegations concerning Father, but it was amended to allege that Father abused N.B. and that Mother had given birth to a baby under questionable circumstances. The children were detained and placed in Grandmother's home.

On July 20, 2007, DCFS filed an ex parte application on behalf of N.B. and C.B. and a section 300 petition as to E.B. against Grandmother alleging that the parents had been periodically living in the Grandmother's home against court orders, that the Grandmother was often intoxicated and that she used inappropriate discipline with the children. The children were placed in foster care. In early August, R.F. wrote to the

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5 A section 300 petition was filed on behalf of the baby, but it was ultimately dismissed when the parents formally relinquished their rights as to that child.

court mediator and the DCFS expressing an interest in gaining custody of the children and even adopting them.

At the jurisdictional hearing for N.B. and C.B., it was indicated that both boys had a number of issues. N.B. had a number of diagnoses including ADHD, autistic disorders and bipolar disorder. C.B. had developmental delays, possible auditory problems and was being evaluated by the Regional Center. The paternal grandmother indicated that she wanted E.B. returned to her, but she was unable to care for the other minors; the parents continued to reside with her.

The petition as to N.B. and C.B. was sustained and the children were found to be described by section 300, subdivisions (a), (b) and (j). Services were offered for the parents and they were ordered into counseling, drug rehabilitation and various parenting courses.

In August 2007, a section 387 petition was filed concerning E.B. adding an allegation of neglect against the Grandmother. The DCFS also filed a section 388 petition to terminate the Grandmother's legal guardianship over E.B. and to re-instate jurisdiction as to E.B. According to an information report, R.F. had been visiting the children and her home included enough beds to accommodate the children; R.F. also expressed an understanding of the children's special needs.

On October 11, 2007, after a contested hearing, the court found that returning E.B. to the Grandmother posed a risk of harm to the child and sustained the petition. The court terminated the legal guardianship. The court ordered that E.B. be placed in the care and custody of the DCFS for suitable placement. At the time, R.F. was identified as the suitable placement for the child. The court further noted that the permanent plan was placement with R.F. with the goal of legal guardianship. All three of the children were released to R.F., and family preservation and in-home parenting services were ordered to be provided. A review hearing was scheduled for February 2008.

On January 9, 2008, the DCFS filed a section 387 petition on behalf of N.B. asserting that R.F. was unable to care for N.B. and that his behavior had become aggressive, requiring that he be psychiatrically hospitalized.

A DCFS report submitted with the petition further indicated that R.F. had enrolled the children in a 24-hour daycare facility and had left the children in "daycare" from after school at 2:00 p.m. until 10:00 p.m. for several weeks while she was completing a degree. The report further disclosed that because R.F. was self-employed and was remodeling a house she sometimes left the children in daycare until 1:00 a.m., believing that she had permission to leave the children in daycare for 10 hours a day, Monday through Friday. The report indicated that R.F. had not provided the social worker with information to justify the long hours in daycare. The report further disclosed that R.F. had been evicted from her housing, and that she and the children were staying in an apartment that R.F. used as an office and that she kept a number of pet rabbits in the apartment as well. Finally, the DCFS report stated that unsuccessful efforts were made to set-up a Team Decision Making meeting with R.F. The DCFS recommended that N.B. be detained and undergo a mental evaluation. In addition, the DCFS noted that R.F. was uncooperative in facilitating the DCFS's examination of her apartment.

R.F. appeared at the detention hearing and was appointed counsel. Both R.F. and her counsel addressed the court, and the court gave R.F. an opportunity to explain her circumstances. R.F. explained her housing situation; she stated the reason that she had to move occurred because the person who owned the house she had been renting returned to the country and needed to reoccupy the premises. She explained that she intended that the stay in her apartment/office was temporary and that the social worker had known about it and "didn't have a problem." She also explained that the social worker had approved the long hours in daycare and that situation occurred because she was attempting to finish her culinary arts degree, but ultimately did not finish because she had missed so many classes. The court expressed surprise that it had not known about R.F.'s schooling, and R.F. responded that the social worker knew about the situation before the children were placed

with R.F., and had told R.F. not to provide the information or documents to the court or speak with the children's attorney.

The children's lawyer expressed concern over the decision to leave the children in "daycare" for such long hours and also relayed a concern from N.B.'s counsel about whether R.F. was an appropriate caretaker for the children. The court also expressed its concern that these special needs children had not received individualized nurturing and care from R.F., and also ordered an administrative review from DCFS. DCFS counsel provided a different account from the social worker. According to the DCFS, the social worker detained the children from R.F. because she could not verify R.F.'s housing situation or other representations. The DCFS also provided the records and other evidence from the daycare showing the hours the children had been in the program and the interaction of R.F with the program,.

Mother's counsel indicated Mother's opposition to the children's placement with R.F. and expressed problems Mother had with visitation since the children had been placed with R.F.

The juvenile court found that reasonable efforts had been made to prevent removal and ordered N.B. detained from R.F.'s care and placed in foster care.

On January 11, 2008, the DCFS filed a section 387 petition on behalf of C.B. and E.B. alleging R.F.'s inability to care for the minors, leaving them in "daycare" for more than 20 hours a day and failure to cooperate with the DCFS and family preservation. The reports and evidence submitted in support of the petition were substantially similar to that submitted to the court in connection with the petition for N.B.

At the outset of the January 11, 2008, detention hearing, R.F's counsel asked to be relieved. R.F. stated that she and her counsel had a miscommunication and that she had wanted a new lawyer. The court relieved R.F.'s counsel and denied R.F. (and her former counsel's request) that she be appointed new counsel. The court reminded R.F. that she was neither the legal guardian nor the de facto parent of the children in which case the court might appoint counsel for her. The court stated that based on the information

provided at the prior hearing from R.F.'s counsel and R.F. the court understood what was going on and that the court did not intend to return the children to R.F.'s care. The court further indicated that R.F. was free to seek her own counsel and to provide the court with any relevant information, but that the information that had been provided to the court thus far was "disturbing." Thereafter, the court directed R.F. to go to the back of the courtroom after R.F. repeatedly attempted to, in the court's view, disclose attorney-client confidential communications with her prior counsel.

The court detained E.B. and C.B. and ordered that they be placed in foster care. A discussion was then held off of the record. When the court returned on the record, it sua sponte dismissed the section 387 petition without prejudice; and then advanced and vacated the adjudicatory hearing on the section 387 petition pertaining to N.B., dismissing the petition without prejudice. When R.F. asked the court why it had dismissed the petitions, the court explained that it was doing so to protect R.F. from the negative consequences that occur if the petition was sustained.[6]

On January 27, 2008, R.F. filed an application for rehearing of the orders of the juvenile court made on January 9, 2008. The application was denied because the "relative caretaker is not entitled to a rehearing under WIC 252."

R.F. filed a timely notice of appeal[7] of the orders dismissing the two section 387 petitions and the order denying her application for rehearing.[8]

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6 The court explained that it would preclude R.F. from getting a foster care license in the future and could result in her being characterized as a child abuser on the child abuse index.

7 On November 24, 2008, the DCFS indicated that it did not intend to take a position in this appeal as it had no objection to the juvenile dependency court's order removing the children from R.F.'s placement and dismissal of the section 387 petitions without prejudice. Thereafter, the children's trial counsel requested that this court appoint them appellate counsel so that they could file a respondent's brief. On December 1, 2008, this court granted the request.

DISCUSSION

On appeal, R.F. contends the juvenile dependency court erred in removing the children from her placement and dismissing the section 387 petitions *sua sponte* prior to the jurisdictional hearing and without considering whether placement with her was no longer appropriate in light of section 361.3. The children contend R.F. lacks standing to challenge the orders. We agree with the children. As we shall explain, R.F. is not aggrieved by the orders and, thus, has no standing to appeal them.

Any person having a legally recognized interest in the subject matter of the order, "which interest is injuriously affected by" it, is considered an "aggrieved party" for purposes of appellate standing. (Code Civ. Proc., § 902; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035.) "One is considered 'aggrieved' whose rights or interests are injuriously affected by the judgment. [Citations.] Appellant's interest '"must be immediate . . . and substantial and not nominal or a remote consequence of the judgment."' [Citation.]" (*County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 737.) Even a parent who, in general, can appeal judgments or orders in juvenile dependency matters must establish he or she is a 'party aggrieved' to obtain a review of a ruling on the merits. "A parent cannot raise issues on appeal from a dependency matter that do not affect her own rights. [Citation.] Standing to appeal is jurisdictional." (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703; *In re Crystal J.* (2001) 92 Cal.App.4th 186, 189; see *Cesar V.* at p. 1035 ["'An appellant cannot urge errors which affect only another party who does not appeal.' [Citation.]"].) Indeed, the fact that a parent or legal guardian takes a position on a matter at issue in a juvenile dependency case which affects the child does not alone constitute a sufficient reason to establish standing to challenge an adverse ruling

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8 R.F. does not make any argument in her briefing to this court addressing the substance or merits of her application for rehearing or the court's denial of the application. Thus, we conclude that she has abandoned any challenge to the order denying rehearing.

on it.' [Citation.]" (*In re Frank, supra,* 81 Cal.App.4th at p. 703; *In re Carissa G.* (1999) 76 Cal.App.4th 731, 736, citing cases.)

Our determination of whether R.F. has standing to contest the court's orders on appeal therefore focuses on whether she had any legal right or recognized interest that was harmed by the court's orders. As we shall explain, none of the limited rights or legal interests that R.F. had as a caretaker or relative of the children was injured as a result of the court's orders.

It is well established that parents and legal guardians have significant substantive rights and recognized interests in the companionship, care, custody and management of their children. (See *In re H.G.* (2006) 146 Cal.App.4th 1, 9 [until their rights are terminated, parents maintain a fundamental interest in the care and custody of their children]; *In re P.L.* (2005) 134 Cal.App.4th 1357, 1361.) In contrast, "de facto parents," relatives and caretakers have certain circumscribed *procedural rights* in dependency proceedings. (See *In re Jonique W.* (1994) 26 Cal.App.4th 685, 691-694 .) De facto parents have certain rights to participate and present evidence in dependency proceedings; they may: (1) be present at hearings; (2) be represented by counsel; and (3) may present evidence. (*In re Patricia L.* (1992) 9 Cal.App.4th 61, 66; Cal. Rules of Court, rule 5.534(e).) In addition, a child's "caregiver" has a right to notice of the statutory review hearings, permanency hearings and section 366.26 hearings and the right to be heard and submit information to the court about the child. (Cal. Rules of Court, rule 5.534(n).) Upon a sufficient showing, a child's "relative" may also be present at a hearing and is permitted to address the court (Cal. Rules of Court, rule 5.534(f)).

However, only a parent or legal guardian has a legal right to custody. (See *In re Keishia E.* (1993) 6 Cal.4th 68, 82 [While de facto parents have an interest in maintaining a relationship with the child and may present a custodial alternative which should be considered by the juvenile court, de facto parent status does not give the de facto parent the right to have the minor placed with him or her, or the right to reunification services or visitation]; *In re Crystal J., supra,* 92 Cal.App.4th at p. 191;

In re P.L., supra, 134 Cal.App.4th at p. 1361 [appellant, a foster parent who had been granted status as de facto parent, was found to have no right to custody or continued placement of child with her]; *In re Miguel E.* (2004) 120 Cal.App.4th 521, 538-540 [grandparents as mere relatives did not have standing to appeal the order granting the 387 petition removing the children from their home placement].)

R.F. is not the children's parent, or legal guardian. Nor is she the de facto parent of the children.[9] Thus, R.F. had no legal right to custody or continued placement of the children in her home. (See *In re Crystal J., supra*, 92 Cal.App.4th at p. 191; *In re P.L., supra,* 134 Cal.App.4th at p. 1361.) Moreover, the fact that the DCFS temporarily placed the children with her for several months does not alter this conclusion. Throughout the brief placement period the DCFS maintained legal custody of the children and the placement with R.F. was subject to the court's supervisory powers. (*In re P.L., supra,* 134 Cal.App.4th at p. 1361.) Consequently, the court's order removing the children did not "aggrieve" R.F. for the purpose of standing to appeal because she had no legally cognizable interest or right to have custody or placement of the children in her home. (Cf. *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10 [parents had standing to appeal an order under section 387 removing child from home of grandparent for placement in a more restrictive setting].)

Likewise, R.L. has not demonstrated that she was aggrieved by the court's dismissal of the section 387 petitions. She was afforded her procedural rights as a

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9 A person seeking de facto parent status must file a written application and establish by a preponderance of the evidence that he or she falls within the definition of de facto parent. (Cal. Rules of Court, rule 5.534(e); *In re Patricia L., supra,* 9 Cal.App.4th at p. 67.) Moreover, under rule 5.534(e) on a sufficient showing the court may recognize the child's *present or previous custodians* as de facto parents and grant standing to participate as parties in disposition hearings and any hearing thereafter at which the status of the dependent child is at issue. R.F., however, did not file an application to establish de facto parent status in these current proceedings.

relative and caretaker.[10] She was present on January 9, 2008, at the detention hearing on the section 387 petition pertaining to N.B. and both she and her counsel presented arguments on her behalf to respond to the allegations contained in the petition and the supporting documents. She also appeared at the subsequent hearing on January 11, 2008, on the section 387 petition pertaining to E.B. and C.B. and was given an opportunity to address the court. Thus, R.F.'s limited procedural rights were not offended by the court's actions.

Our conclusion is consistent with the case upon which R.F. relies – *In re Jonique W., supra,* 26 Cal.App.4th 685. In *Jonique W.*, the juvenile dependency court denied the grandmother's (who was also the de facto parent) request for a contested hearing on the section 387 petition which alleged that she had not protected the minors in her home. The court of appeal concluded that the grandmother as the custodial relative and de facto parent had been denied her *procedural* rights to present evidence and participate in the section 387 petition proceedings. The court concluded that while de facto parents and custodial relatives did not have all the substantive rights and preferences as legal parents or guardians, they had certain procedural rights to assert and protect their interests in the child in section 387 proceedings where their conduct and removal of the minors from them was at issue. (*Id.* at pp. 692-693.)[11] Here, R.F. was afforded the limited procedural rights denied the grandmother in *Jonique W.*

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10 R.F. also suggests that the removal of the minors from her care deprived her of the relative caretaker preference she would have been given under section 366.26, subdivision (k) if the court had approved a permanent plan for adoption. In our view, given that the court had not identified "adoption" as the permanent plan for the children, any interest R.F. may have had under section 366.26, subdivision (k) is too remote to confer standing.

11 To the extent that *Jonique W.* is read to suggest that *relative caretakers* have substantive rights to custody, we would disagree with that suggestion as inconsistent with controlling case law, including that from the California Supreme Court, *In re Keishia E., supra,* 6 Cal.4th at page 82, that clearly provides that *only* parents and legal guardians have substantive rights to custody.

In view of all of the foregoing, we conclude that R.F. is not aggrieved by the court's orders removing the children and dismissing the section 387 petitions and thus, has no standing to raise the issue on appeal. Since R.F. raises no other appellate issue, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

WOODS, J.

We concur:

PERLUSS, P. J. **ZELON, J.**